

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MANZELL C. SAMPSON,

Defendant-Appellant.

UNPUBLISHED

October 2, 2003

No. 239329; 239330

Wayne Circuit Court

LC No. 01-001208; 01-000390

Before: Whitbeck, C.J., and Talbot and Zahra, JJ.

PER CURIAM.

Defendant Manzell Sampson appeals as of right his jury conviction of two counts of armed robbery,¹ one count of safe breaking,² and one count of felony-firearm³ in these consolidated cases arising from two robberies that Sampson claims to have committed at the behest of two unknown men who chained a remote-controlled bomb to his chest. Because the jury was inadvertently permitted to see a portion of Sampson's police statement in which he apparently admitted that the bomb was not real, thus prejudicing his duress defense, we reverse and remand for a new trial.

I. Basic Facts And Procedural History

The essential facts of this case are undisputed. On the afternoon of November 25, 2000, Sampson walked into a CVS Pharmacy at the corner of Seven Mile and Schoenherr in Detroit with a knapsack on his back that was chained to his body and padlocked in the front. Sampson asked employee Michelle Pickett to see a manager. When assistant manager Donald Schiffler responded, Sampson handed him a note stating that he was armed, that he had a bomb, and that if Schoenherr did everything that was asked everyone would "live through this." Schiffler noticed that there were wires wrapped around Sampson's chest and extending out of his sleeves. Sampson then told Schiffler to give him the money from the safe. Schiffler described Sampson's demeanor as "a little shaky."

¹ MCL 750.529.

² MCL 750.531.

³ MCL 750.227b.

Schiffler took Sampson to the main-floor office and unlocked the door. After closing the door behind them, Sampson instructed Schiffler to open the safe. Schiffler unlocked the safe, but explained to Sampson that it was on a timer and would not open for two minutes. Sampson asked Schiffler for scissors or a screwdriver, then turned on a walkie-talkie attached to his bag and reported that the safe was on a timer. Schiffler heard a voice respond, "Just shoot him, then." Sampson said, "I can't do that." After Schiffler assured Sampson that the safe would open in two minutes and he would get the money, Schiffler heard Sampson tell the party on the walkie-talkie that it was only a two-minute timer, then heard the party respond that Sampson was to shoot him if the safe did not open after two minutes. Although Schiffler never saw a gun, he thought Sampson had one because he kept his left hand in his pocket throughout the transaction and nudged Schiffler once with the pocketed hand to hurry him along.

When the safe opened, Schiffler put its contents into a bag. When Sampson found the bag too heavy to carry, he ordered Schiffler to take some of the coins out. Sampson then told Schiffler to lie on the floor, and told him, "Tell the police that they made me do it." Schiffler recalled that Sampson told him his name, which he could not clearly understand, but thought was "Marcell." Schiffler then saw Sampson run out the back door.

Shortly thereafter, Sampson appeared at a Murray's auto-parts store on Gratiot Street and Van Dyke in Detroit and asked employee Charneice Carter to see the manager. Sampson was wearing the padlocked backpack as well as a set of earphones. When manager James "Rick" Miller arrived, Sampson handed him a letter that read:

This person is armed with a bomb to explode, if this letter is not complied with. He is also armed with a handgun, to shoot and kill upon my orders. So, don't turn a robbery into murder. Take this person to the safe. You have three to five minutes to comply, or you die.

Miller asked whether this was a robbery, and Sampson reportedly responded that it was, and because Sampson was "dead anyway," Miller "might as well give me the money now." Miller explained that he first had to wait on a pair of customers so they would not think anything was wrong. Sampson followed Miller to the service desk, where Miller told the customers he would be right with them. According to Miller, Sampson then showed him a large silver handgun that was in his right pocket.

Miller took Sampson to the cash office, where Carter was counting money. Sampson instructed Carter to shut up and put the money in the bag, which she did. Sampson then put the gun against Miller's throat and ordered him to open the safe and put the contents in a bag. Both Miller and Carter recalled that during the operation, Sampson repeated that someone was making him do what he was doing and told Miller his full name twice.

At trial, Sampson admitted to committing these robberies, but testified that he did so under duress. Sampson testified that was on his way to visit his sister when he stopped at a gas station on the corner of Seven Mile and Schoenherr to put air in the tire of his car, a BMW registered in his girlfriend's name. As he standing at either the gas pump or the air pump—his testimony was contradictory on this point—a person holding a handgun emerged on foot from an alley behind the gas station and told him to get in the BMW. Sampson described the man as black, in his mid-thirties, and about six feet two inches tall. Sampson said the man initially got

into the driver's side but, after realizing the car had a stick shift, ordered Sampson to drive instead.

At the man's orders, Sampson drove down Seven Mile to Gratiot, then to Hazelridge, then on to a side street called Peoria. According to Sampson, a man emerged from the alley and ordered Sampson to get out of the car and turn around, then chained and locked to his body a backpack that smelled like gasoline and had an extruding electrical wire. Sampson touched the wire and felt an electrical charge. The second man put a briefcase on the back seat of the car. Sampson was then ordered back into the driver's seat, where the two men told him through the driver's window to wait for further orders, and warned that there was an explosive in the backpack that would go off if he tampered with the wire. The men told him they could also cause the backpack to explode by remote control.

After Sampson had waited a minute or two, he heard a voice coming from a walkie-talkie that was clipped to the briefcase. The voice ordered Sampson to open the briefcase and take out a gun that Sampson testified was fake, then instructed him to write a note that they dictated. Sampson testified that he followed these orders because he believed the men would blow up the explosives in the backpack if he did not. Sampson confirmed Schiffler's account of the robbery at the CVS Pharmacy, and explained that he had asked for scissors or a box cutter to free himself from the backpack. Sampson testified that he had said "I can't do that" after being ordered to shoot Schiffler because he was unwilling to kill someone, although he admitted on cross-examination that this explanation was not consistent with his earlier statement that the gun was fake, which, if true, meant that he could not have shot Schiffler even if he had been willing to do so.

After getting the money, Sampson was ordered to drive back to Peoria, where the same two men met him, took the money out of the briefcase, and returned the briefcase to Sampson. Because Sampson was having difficulty hearing the walkie-talkie, the men tethered it to his side and put an earpiece in it, which Sampson wore into the Murray's auto parts store as he robbed it. Sampson explained that he was too panicked to ask for help or attempt to free himself from the backpack. Sampson again returned to Peoria with the money, which the two men took. The men then removed the padlock and the backpack and left. Sampson drove immediately to the Ninth Precinct and told the police what had happened. The police placed Sampson under arrest without investigating his kidnapping claim.

The trial court instructed the jury on the defense of duress, stating that Sampson should be found not guilty if there was threatening behavior that would have made a reasonable person fear death or bodily harm; Sampson actually feared death or serious bodily harm at the time he acted; Sampson acted to avoid harm to himself; and the duress did not arise through Sampson's own fault or negligence. The trial court further instructed the jury that Sampson did not have to prove that he acted under duress; rather, the prosecutor had the burden to prove beyond a reasonable doubt that Sampson was not acting under duress.

When preparing the exhibits to give the jury for deliberations, the prosecutor inadvertently gave the jury the first page of Sampson's statement to the police, which contained the following:

Q. Mancell [sic] Sampson, on Saturday, November 25, 2000 at approximately 3:05 pm, at the location of 13600 E 7 Mile (CVS), did you rob the CVS Drugstore with a handgun and a simulated explosive device?

A. Yes.

This statement had not been admitted into evidence. When the prosecutor became aware of the error during deliberations, he brought it to the trial court's attention. Defense counsel moved for a mistrial, arguing that there was no evidence that the explosive device was simulated, or that the handgun was real, and Sampson's trial testimony indicated the opposite. The trial court denied the motion, stating:

The defendant has gotten on the stand, and you have stated in your opening statement that the defendant did commit this offense, but he was acting under duress. It was never denied. None of that was ever denied.

* * *

He stated, over and over again, that he had something on his back which they said was going to explode. He even said that he had something in a, a wire, and he could feel the tingling of it. And they told him he was going to blow up, if he did not commit the offense. There is nothing on there that they haven't already heard.

* * *

The Court will deny the Motion for a Mistrial. I think it was not only inadvertent. But not only was it inadvertent, it stated exacted [sic] what the defendant said all the time, that he pulled the robbery. The opening statement was, "Yes, he pulled the robbery."

The defense in this case was not that he did not do it, but that it was under duress. And I even told the jury, I said those statements were not admitted into evidence. The only thing that was admitted into evidence was the statements that were read in.

And I told them that—in fact, I just knew right now—well, of course that going in does not change anything at all. It's the same thing he's said all the time. It's not denied.

* * *

And all the evidence in this case was he was handed a gun, or something that looked like a gun. He denied it was a gun. . . . But I don't think that is relevant. And it's not prejudicial, because it's exactly, exactly what he testified to in court.

The jury returned a guilty verdict on all counts. Defense counsel requested that the trial court ask each juror whether the improperly admitted document affected their verdict, but the trial court refused, stating:

They did not believe his defense that somebody coerced him. And as I explained to the jury, I didn't believe it, either. And hearing that statement, that was just let in there—it had nothing at all to do with this verdict. It was based on whether or not he was under duress. And they didn't believe it.

Defense counsel moved for a new trial on this ground, but the trial court denied the motion at the sentencing hearing, stating: “I don’t see how there was any prejudice, because it only said what had been the Defense theory all along.” The trial court then sentenced Sampson to four consecutive terms of 10 to 20 years’ imprisonment for each of the armed robbery and safe breaking counts, plus two years’ imprisonment for the felony-firearm conviction.

II. Submission To Jury Of Exhibit Not In Evidence

A. Standard Of Review

To show that the erroneous submission of evidence to the jury requires reversal, a defendant must demonstrate that, after examining the entire cause, it affirmatively appears to be “more probable than not that the error was outcome determinative.”⁴ We then examine the nature of the error and assess its effect “in light of the weight and strength of the untainted evidence.”⁵

B. Allowing Jury To See Portion Of Sampson’s Statement To Police

We cannot over emphasize that great caution, diligence and precision is required of the bench and bar in discharging professional and Constitutional duties during a criminal trial. Extreme care is particularly required when submitting evidence into the jury room for use during deliberations. The trial court should instruct trial counsel to scrutinize the proposed exhibits and obtain from trial counsel a statement on the record verifying that the exhibits to be submitted to the jury were properly admitted in evidence.

Generally, it is error to provide a jury with evidence that was not admitted at trial.⁶ When a jury is exposed to extraneous evidence not properly admitted during trial, prompt action by the trial court may render the error harmless. If the extraneous evidence is removed from the jury immediately upon its discovery, the trial court cautions the jury that they cannot consider the extraneous evidence and the jury is instructed to start their deliberations over without consideration of the extraneous evidence, any error arising from the improper submission of evidence to the jury may be purged from the jury’s verdict.

⁴ *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

⁵ *Id.* at 495, quoting *People v Mateo*, 453 Mich 203, 215; 551 NW2d 891 (1996).

⁶ See *People v Davis*, 216 Mich App 47, 57; 549 NW2d 1 (1996).

Here, the prosecutor inadvertently gave the jury the first page of Sampson's statement to the police, in which he agreed with an officer's statement that the device strapped to his chest throughout the robberies was not a real bomb, but only a simulated explosive device. Initially, we note that Sampson was asked to agree or disagree with a compound statement with three distinct factual premises: (1) whether he committed the robbery, (2) whether he did it with a handgun, and (3) whether he did it with a simulated explosive device. Sampson's answer to this compound question was "yes." Without an opportunity to cross-examine Sampson about this statement, it is impossible to determine whether he was in fact agreeing with each of these separate statements or, rather, intending only to confess that he had committed the robberies.

More importantly, Sampson's entire defense was predicated on the fact that he was acting under duress because he believed there was an actual bomb strapped to his body that could be made to explode by remote control. Because Sampson's police statement directly contradicted the factual underpinning of his duress defense by apparently acknowledging that he knew the bomb was not real, it affirmatively appears more probable than not that allowing the jury to see the statement was outcome-determinative.⁷

Regrettably, neither the trial court nor the prosecution made any effort to purge the jury deliberations of this error through the removal of the objectionable exhibit, the use of cautionary instructions, and further jury deliberations. Accordingly, under these circumstances, we reverse and remand for a new trial. In so doing, we express no opinion respecting the credibility of Sampson's account of events, because this determination can only be made by the trier of fact.⁸ In light of our disposition, we need not consider Sampson's remaining arguments.

Reversed and remanded for a new trial.

/s/ William C. Whitbeck
/s/ Michael J. Talbot
/s/ Brian K. Zahra

⁷ *Lukity*, *supra* at 495-496.

⁸ See *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990).